

HIGH COURTO UTTARANCHALAT NAINITAL

(Court’s order whether the case is or not approved for reporting.)
(Chapter VIII Rule 32 (2)(b))

Description of the case.

W.P No 459 of 2004 (SS) (Petitioner)

Shawan Kumar

Vs

Senior Superindents of police (Respondent)

Haridwar

Approved for reporting.

~~Not approved for reporting~~

Date of decision-13-7-2005

Initial of Judge

HIGH COURTO UTTARANCHALAT NAINITAL

Writ Petition No. 459 of 2004 (SS)

Shrawan Kumar Petitioner
Versus
Senior Superintendents of Police, Hardwar..... Respondent

Sri Ramji Srivastava, Advocate for the petitioner
Standing Counsel for the respondent.

Dated: July 13, 2005

Hon' ble Rajesh Tandn J.

By the present writ petition the petitioner has prayed for the issue of a writ of certiorari quashing the orders dated 8.1.2004 and 17.4.2004 passed by the respondent.

Briefly stated the petitioner was appointed as Constable in Civil Police at Dehradun by the competent authority on 1.7.1994 and subsequently he was transferred to Police Lines, Haridwar. On 4.1.2004 the petitioner was arrested by the Police and a case under section 392 I.P.C. Case Crime No. 311 of 2003, P.S. Dalanwala. The petitioner was placed under suspension vide order dated 8.1.2004 passed by the Senior Superintendent of Police, Hardwar. The petitioner has submitted that during his detention in jail he was also implicated in Case Crime No. 62 of 2002, and Case Crime No. 79 of 2002 under section 380 I.P.C. P.S. Clement Town, Dehradun. The petitioner has been released on bail in all the cases pending against him. On 17.4.2004, the

Senior Superintendent of Police, Haridwar dismissed the petitioner from service.

The contention of the petitioner is that the order of dismissal was passed without holding an inquiry or without giving opportunity to the petitioner for hearing.

The respondent filed counter affidavit and narrated the criminal cases pending against the petitioner for theft under section 457, 380 and 411 I.P.C. Preliminary inquiry as conducted against the petitioner by the Circle Officer, Police Line, Haridwar and he vide report dated 15.4.2004 found the petitioner guilty of the criminal acts. Since the petitioner being involved in the heinous crime and there were probability that the petitioner can manipulate or distort the evidence or can approach influence to the witnesses as such by reserving the provisions of Rule 8(2) (b) of Uttar Pradesh Officers of the Sub Ordinate Rank (Punishment & Appeal) Rules 1991 the enquiry Officer recommended for dismissal of the petitioner from service.

I have heard the learned counsel for the parties and have perused the record.

The petitioner was removed from service by the Superintendent of Police, Haridwar under Rule 8 (2) (b) of U.P. police Officer of the Subordinate Ranks (Punishment and Appeal) rules, 1991. Rule 8 reads as under:

8. ***Dismissal and removal:*** (1) *No Police Officer shall dismissed or removed from service by an authority subordinate to the appointing authority.*

(2) *No Police Officer shall be dismissed, removed or reduced in rank except after proper enquiry and disciplinary proceedings as contemplated by these rules:*

Provided that this rule shall not apply

- (a) Where a person is dismissed or removed or reduced in rank on the ground of conduct, which has led to his conviction on a criminal charge: or*
- (b) Where the authority empowered to dismiss or removed a person or to reduce him in rank is satisfied that for some reason to be recorded by that authority in writing it is not reasonably practicable to hold such enquiry or*
- (c) Where the Government is satisfied that in the interest of the security of the State, it is not expedient to hold such enquiry.*

The Key words in Rule 8(2) (b) are “not reasonably practicable”. The reasons, thus, which can satisfy the requirement of Rule 8(2) (b) has to be recorded in writing. In the present case no reasons have been recorded by the Superintendent of Police in writing as to why it was not reasonably practicable to hold such enquiry as provided under Rule 8 (2) (b) of the aforesaid Rules. The offences alleged against the petitioner relating to theft for which he is facing trial before the criminal Court. There is no allegation against the petitioner that he committed such an offence which may effect the security of the State. Thus there appears no reason for not holding proper disciplinary inquiry against the petitioner by the appointing authority.

The Apex Court in the case *Jaswant Singh v. State of Punjab* (1991) 1 SCC 362 had considered the provisions of Article 311 (2) Second proviso (b) of the Constitution of India. Rule 8 (2) (b) of the Rules in *pari* with the second Proviso (b) of Article 311, sub clause (2). The Apex Court has held as under:

Insofar as clause (b) is concerned this Court pointed out that two conditions must be satisfied to sustain any action taken thereunder. These are (i) there must exist a situation which renders holding of any inquiry “not reasonably practicable”; and (ii) the disciplinary authority must record in writing its reasons in support of its satisfaction. Of course the question of practicability would depend on the existing fact-situation and other surrounding circumstances, that is to say, that the question of reasonable practicability must be judged in the light of the circumstances prevailing at the date of the passing of the order. Although clause (3) of that article makes the decision of the disciplinary authority in this behalf final such finality can certainly be tested in a court of law and interfered with if the action is found to be arbitrary or mala fide or motivated by extraneous considerations or merely a ruse to dispense with the inquiry. Also see: Styavir Singh v. Union of India, Shivaji Atmaji Sawant v. State of Maharashtra and Ikramuddin Ahmed Borah v. Superintendent of Police, Darrang.”

The Apex Court in the aforesaid judgment had further observed as under:

“This is no more than a mere reproduction of paragraph 3 of the impugned order. Our attention was not drawn to any material existing on the date of the impugned order in support of the allegation contained in paragraph 3 thereof that the appellant had thrown threats that he and his companions will not allow holding of any departmental enquiry against him and that they would not hesitate to cause physical injury to the witnesses as well as the enquiry officer if any such attempt

was made. It was incumbent on the respondents to disclose to the court the material in existence at the date of the passing of the impugned order in support of the subjective satisfaction recorded by respondent 3 in the impugned order. Clause (b) of the second proviso to Article 311 (2) can be invoked only when the authority is satisfied from the material placed before him that it is not reasonably practicable to hold a departmental enquiry. This is clear from the following observation at page 270 of Tulsiram case: (SCC p. 504, para 130)

“A disciplinary authority is not expected to dispense with a disciplinary inquiry lightly or arbitrarily or out of ulterior motives or merely in order to avoid the holding of an inquiry or because the department’s case against the government servant is weak and must fail.”

The decision to dispense with the departmental enquiry cannot, therefore, be rested solely on the ipse dixit of the concerned authority. When the satisfaction of the concerned authority is questioned in a court of law, it is incumbent on those who support the order to show that the satisfaction is based on certain objective facts and is not the outcome of the whim or caprice of the concerned officer.”

The order, therefore, was passed by the respondent in utter violation of the principles of natural justice.

The Apex Court in the case D.K. Yadav vs. J.M.A. Industries Ltd; (1993) 3 SCC 259 has held as under:

“It is a fundamental rule of law that no decision just be taken which will affect the right of any person without first being informed of the case and giving him/her an opportunity of putting forward his/her case. An order involving civil consequences must be made consistently with the rules of

natural justice, In Mohinder Singh Gill vs. Chief Election Commissioner (1978) 1 SCC 405 the Constitution Bench held that civil consequences covers infraction of not merely property or personal right but of civil liberties, material deprivations and non-pecuniary damages. In its comprehensive connotation every thing that affects a citizen in his civil life inflicts a civil consequence. Black's law Dictionary, 4th Edn. Page 1487 defined civil rights are such as belong to every citizen of the state of country..... they include..... Rights capable of being enforced or redressed in a civil action..... In State of Orissa vs. (Miss) Binapani Dei (1967) 2 SCR 625 this Court held that even an administrative order which involves civil consequences must be made consistently with the rules of natural justice. The person concerned must be informed of the case, the evidence in support thereof supplied and must be given a fair opportunity to meet the case before an adverse decision is taken. Since no such opportunity was given it was held that superannuation was in violation of principle of natural justice.

In State of W.B. vs. Anwar Ali Sarkar 1952 SCR 284: AIR 1952 SC 75 per majority, a seven Judges bench held that the rule of procedure laid down by law comes as much within the purview of Article 14 of the Constitution as any rule of substantive law. In Maneka Gandhi vs. union of India (1978) 1 SCC 248 another Bench of seven Judges held that the substantive and procedural laws and action taken under them will have to pass the test under Article 14. The test of reason and justice cannot be abstract. They cannot be divorced from the needs of the nation. The tests have to be pragmatic otherwise they would cease to be reasonable. The procedure

prescribed must be just, fair and reasonable even though there is no specific provision in a statute or rules made thereunder for showing cause against action proposed to be taken against an individual, which affects the right of that individual. The duty to give reasonable opportunity to be heard will be implied from the nature of the function to be performed by the authority, which has the power to take punitive or damaging action. Even executive authorities which take administrative action involving any deprivation of or restriction on inherent fundamental rights of citizens, must taken care to see that justice is not only done but manifestly appears to be done. They have a duty to proceed in a way, which is free from even the appearance of arbitrariness, unreasonableness or unfairness. They have to act in a manner which is patently impartial and meets the requirements of natural justice.”

The Apex Court in the case *Shrilekha Vidyarthi vs. State of U.P.* AIR 1991 SC 537 has held as under:

“It is now too well settled that every State action, in order to survive, must not be susceptible to the vice of arbitrariness which is the crux of Art. 14 of the Constitution and basic to the rule of law, the system which governs us. Arbitrariness is the very negation of the rule of law. Satisfaction of this basic test is every state action is sine qua non to its validity and in this respect, the State cannot claim comparison with a private individual even in the field of contract. This distinction between the State and a private individual in the field of contract has to be borne in the mind.

.....

.....

Every State action must be informed by reason and it follows that an act uninformed by reason, is arbitrary. Rule of law

Contemplates governance by laws and not by humour, whims or caprices of the men to whom the governance is entrusted for the time being. It is trite that 'be you ever so high, the laws are above you,' This what men in power must remember, always.

Almost a quarter century back, this Court in S.G. Jaisinghani vs. Union of India (1967) 2 SCR 703, at pp. 718-19 : (AIR 1967 SC 1427 at p. 1434), indicated the test of arbitrariness and the pitfalls to be avoided in all State actions to prevent that vice, in a passage as under:

"In this context it is important to emphasize that the absence of arbitrary power is the first essential of the rule of law upon which our whole constitutional system is based. In a system governed by rule of law, discretion when conferred upon executive authorities must be confined within clearly defined limits. The rule of law from this point of view means that decision should be made by the application of known principles and rules and in general, such decisions should be predictable and the citizen should know where he is. If a decision is taken without any principle or without any rule it is unpredictable and such a decision is the antithesis of a decision taken in accordance with the rule of law (see Dicey " Law of the constitution"

Tenth Edn. Introduction ex). "Law has reached its finest moments" stated Douglas. J. in United States v. Wunderlick (1951-342 US 98: 96 Law Ed 113), "When it has freed man from the unlimited discretion of some ruler..... where discretion is absolute, man has always suffered:. It is in this sense that the rule of law may be said to be the sworn enemy of caprice, Discretion, as Lord Mansfield stated it in classic terms in the case of John Wikes (1770-98 ER 327) "means sound

Discretion guided by law. It must be governed by rule. not humour: it must not be arbitrary, vague and fanciful.”

The petitioner has stated that other employees junior to her are working in the establishment and the post is still lying vacant, she is therefore. Entitled to continue on her post.

It has been held by a Division Bench of Allahabad High Court consisting of Hon’ble Mr. Justice M. Katju and Hon’ble Mr. Justice U.K. Dhaon that a temporary employee is also entitled for all benefits. It has been observed as under:

“The traditional concept has been that a temporary employee has no right to the post vide State of U.P. v. Kaushal Kishore 1991 (62) FLR 350 (SC) and Triveni Shanker Saxena vs. State etc. 1992 (64) FLR 330 (SC). However, in our opinion, this traditional concept has now to stand modified in the light of the new interpretation of Article 14 to the Constitution given by the Supreme Court in the Seven Judge Constitution Bench decision in Meneka Gandhi v. Union of India AIR 1978 SC597. It has been held in that decision that Article 14 is not only directed against discrimination but also against arbitrariness. Hence, in our opinion, the traditional concept that a temporary employee has no right to the post has now stands modified in view of the new interpretation of Article 14 in Maneka Gandhi’s case and it can no longer be treated as an absolute concept.”

The alleged preliminary inquiry held by the Circle Inspector, Police Line against the petitioner was ex parte and no notice of such inquiry was ever served upon the petitioner nor he was afforded any opportunity to be heard. The punishing authority has made the alleged enquiry as basis of his conclusion which is not proper.

In view of the aforesaid observation, a writ of certiorari is issued quashing the order dated April 17, 2004, passed by the respondent. The respondents are directed to reinstate the petitioner, However, liberty is given to the respondent to proceed a fresh if he intends to do so in accordance with law after affording opportunity to the petitioner for hearing.

Accordingly, the writ petition is allowed. No order as to costs.

Dated: 13.7.2005

Rajesh Tandon J.